

ENTERED

March 17, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THOMAS ELTON McDONNEL,

Petitioner,

v.

WILLIAM STEPHENS,

Respondent.

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CIVIL ACTION NO. H-16-0540

ORDER OF DISMISSAL

Petitioner, a state inmate proceeding *pro se*, filed a section 2254 habeas petition complaining of the state courts' handling of his application for state habeas review.

Based on consideration of the petition, matters of public record, and the applicable law, the Court DENIES habeas relief and DISMISSES this lawsuit for the reasons that follow.

Background and Claims

Petitioner states that, in 2009, he was convicted of aggravated sexual assault of a child and indecency with a child in Harris County, Texas, and sentenced to life imprisonment. He complains that the state trial court denied his application for habeas relief without an evidentiary hearing and relied on affidavits for credibility determinations even though a different state district judge had sat for trial. Petitioner argues that the state habeas process violated his Fourteenth Amendment due process protections and that he is entitled to an

evidentiary hearing by the state court. In the alternative, he states that he is entitled to a new trial or an acquittal on the underlying criminal charges.


Analysis

It is axiomatic that “infirmities in state habeas proceedings do not constitute grounds for federal habeas relief.” *Duff-Smith v. Collins*, 973 F.2d 1175, 1182 (5th Cir. 1992). This is because “an attack on the state habeas proceeding is an attack on a proceeding collateral to the detention and not the detention itself.” *Rudd v. Johnson*, 256 F.3d 317, 320 (5th Cir. 2001). Petitioner’s complaints raised herein constitute an attack on a state habeas proceeding, which is not cognizable in a federal habeas action. Accordingly, petitioner is not entitled to relief and his petition must be summarily dismissed.

Conclusion

Habeas relief is DENIED and this lawsuit is DISMISSED WITHOUT PREJUDICE for failure to state a cognizable federal habeas claim. Any and all pending motions are DENIED AS MOOT. A certificate of appealability is DENIED.

Signed at Houston, Texas on March 17, 2016.



Gray H. Miller
United States District Judge